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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/722,380 | 11/25/2003 | August Karl Meyer | 038675/270589 | 4624 |
| 826 | 7590 | 01/05/2005 | EXAMINER | |
| ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000 | | | EDWARDS, NEWTON O | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1774 | |

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,380

Applicant(s)

MEYER ET AL.

Examiner

N Edwards

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-30 and 35-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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Applicant election of group II claims 31-34 is acknowledged.

In accordance with the election of species requirement Chis Humphrey elected phosphorescent in claim 31 and nylon 6 in claim 34.

Applicant urges that 1) claims 31-34 are drawn to a sheath core which is a sub embodiment of independent claim 1 of Group I. As such Group I and Group II does not pose a serious burden to the Examiner.

That conclusion is incorrect. Group I is a multi component fiber with at least one colorant which read on composite yarn or a side by side with two colorants. Group I claim 4 is a photoluminescent colorant which is not included in Group II. Further the restricting shows a serious burden to the Examiner divergent subject matter as well as the separate status in the art. Your request to combine Group I and Group II is denied.

Applicant urges that 2) they object to the separation of Group II and Group III.

Group II defines a bicomponent sheath core fiber wherein the sheath is non-luminescent while the core contains at least one luminescent colorant. Group II fiber can be an eccentric fiber. Group II fiber can have a plurality of core in a matrix (islands in the sea). None of the forgoing is required in Group III claims 31-34. Therefore group II and group III will not be combined. Note the foregoing of Group II is not required in Group I claims 2-24 and claim 1. Thus Group II will not be combined with Group I. Group IV is withdrawn from the restriction of record.

Regarding the IDS dated 3/17/04, the lined reference not considered since they were not submitted.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31-34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Shimizu (U.S. 162,539).


Shimizu teaches a sheath core bicomponent fiber comprising a core include a polymer and about 5-60% by weight of a phosphorescent pigment (luminous pigment) such as metal aluminate oxide of claim 1. Shimizu further teaches the sheath includes a polymer and no luminous pigment. Shimizu still further teaches the core to sheath ratio (cross-sectional area) is in the range of from 1:3 (which includes a core of less than about 35%).

See claim 1 and column 3, line 1 of Shimizu. Shimizu yet still further teaches the core and sheath polymers can be the same or different at column 4, line 39. Shimizu also teaches the polymer can be polyolefin, polypropylene, Nylon 6, Nylon 66 and PET at column 1 and column 4 line 29.

Any inquiry concerning this communication should be directed to Primary Examiner Edwards at telephone number 571-272-1521.

Edwards/af

December 28, 2004


N. EDWARDS
PRIMARY EXAMINER